IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.M. No. 23598-CII of 2006 and
I.T.A. No. 600 of 2006

Date of Decision: 30.10.2007

M/s Parkash Agro Industries

....Appellant.

Versus

Deputy Commissioner of Income Tax, Circle I, Faridabad

...Respondent.

CORAM:- HON'BLE MR. JUSTICE M.M. KUMAR.

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.

PRESENT: Mr. B.L.Gulati, Advocate for the appellant.

Mr.Yogesh Putney, Advocate for the respondent.

**AJAY KUMAR MITTAL, J.**

C.M. No. 23598-CII of 2006

This is an application under Section 5 of the Limitation Act for condonation 117 days' delay in filing the appeal. The application is supported by the affidavit.

Having heard learned counsel for the parties and perusing the application which is supported by an affidavit, the delay of 117 days in filing the appeal is condoned.

CM stands disposed of accordingly.

ITA No. 600 of 2006

In this appeal by the assessee under Section 260A of the

Income Tax Act, 1961 (for short “the Act”) against the order of the Income Tax Appellate Tribunal, Delhi Bench “G” Delhi (hereinafter referred to as “the Tribunal”) passed in ITA No. 325 (Del)/2002 on 24.2.2006 for the assessment year 1991-92, it has been claimed that the following substantial questions of law arise for consideration of this Court:-

“1. Whether the appellant having paid the tax payable as per return, to visit him with a liability of interest which he could not have imagined and as held in J.K.Synthetic's case, would be asking him to do the rare impossible?

2. Whether the learned Tribunal was justified to dispose of the matter in the case of pendency of Insilco's case before the Delhi High Court as remanded by the Hon'ble Apex Court?

3. Whether the learned Tribunal was justified to impose interest on solely depending on amendment of Explanation 1 to Section 143B in view of the decision of the Hon'ble Supreme Court in J.K.Synthetic's case?

4. Whether in view of the fact that the return of the appellant had been accepted under Section 143 (1) of the Act, interest could be charged even on the basis of the amended explanation when it specifically defines assessed tax as the tax on total income determined under sub-section (1) of Section

143 of the Act?"

The facts as narrated in the statement of case are that the assessee filed a return of income for assessment year 1991-92 declaring a loss of Rs.31,130/- and advance tax of Rs.1,37,808/- was paid. The case of the assessee was processed under Section 143 (1) of the Act and refund was made. Later on, the Assessing Officer vide its order dated 30.8.1993 assessed the income of the assessee at Rs.12,17,990/- which was rectified to Rs.11,86,330/- under Section 154 of the Act. Accordingly, a notice of demand was issued in which interest had also been charged under Section 234B of the Act. The assessee moved an application under Section 154 of the Act on 9.2.1994 and the same was dismissed by the Assessing Officer observing that where the advance tax paid is less than 90 per cent of the assessed tax, the interest under Section 234B of the Act is chargeable. The assessee filed an appeal before the CIT (A) who vide its order dated 9.11.1999 allowed the appeal and deleted the interest charged under Section 234B of the Act. Aggrieved with the same, the revenue filed an appeal before the Tribunal and the Tribunal vide its order dated 24.2.2006 allowed the appeal of the revenue holding the charging of interest under Section 234B of the Act to be proper. Hence, the present appeal by the assessee.

Learned counsel for the assessee has vehemently contended that the Tribunal was in error in reversing the order of CIT (A) thereby holding the assessee exigible to interest under Section 234B of the Act especially when the assessee had filed return of loss and was not liable to pay advance tax. According to the learned

counsel, the assessee had been incurring losses in the past and it could not foresee that the positive income would accrue during the previous year relevant to the assessment year 1991-92 and, therefore, there was no liability to pay advance tax and consequently no interest under Section 234B of the Act could be levied. Reliance had been placed on the Apex Court judgment in **J.K.Synthetics Limited v. Commercial Taxes Officer, AIR 1994 SC 2393**, **Commissioner of Income Tax and others v. Ranchi Club Ltd. [2000] 164 CTR 200 (SC)** and a judgment of the Patna High Court in **Ranchi Club Ltd. v. CIT, [1996] 217 ITR 72**.

Mr. Yogesh Putney, the learned counsel for the revenue drew our attention to Explanation to Section 234B of the Act. According to the learned counsel, the aforesaid Explanation 1 to Section 234B of the Act has been amended by Finance Act, 2001 with retrospective effect from 1.4.1989 and the vires of the same stands upheld by this Court in **Raj Kumar Singal v. Union of India and others, [2002] 255 ITR 561.** As per amended provisions which are applicable to the present assessment year 1991-92 as well, interest under Section 234B of the Act is to be charged with reference to assessed tax. He supported the order passed by the Tribunal and further submitted that the judgments relied upon by the assessee do not support its case any longer after the aforesaid amendment which has been made applicable w.e.f 1.4.1989.

We have thoughtfully considered the respective submissions made by the learned counsel for the parties and do not find any force in the appeal.

It is no doubt true that prior to the amendment brought by

Finance Act, 2001 which has been made effective retrospectively from 1.4.1989, the interest under Section 234B of the Act was chargeable with reference to the total income as had been declared by the assessee in its return and not on the assessed income. Explanation 1 to Section 234B of the Act was amended by Finance Act, 2001. It reads thus:-

> "*Explanation I*.- In this section, 'assessed tax' means the tax on the total income determined under sub-section (1) of section 143 or on regular assessment as reduced by the amount of tax deducted or collected at source in accordance with the provisions of Chapter XVII on any income which is subject to such deduction or collection and which is taken into account in computing such total income.
>
> (b) in sub-section (3), for the words 'one and one-half per cent', the words 'one and one-fourth per cent' shall be substituted with effect from the Ist day of June, 2001."

The said explanation was subject matter of challenge before this Court in Raj Kumar Singal's case (supra) where the Division Bench while upholding the validity of the said provision, interpreted it as under:-

> "A comparison of the two provisions shows that under the original provision interest was leviable on the income as declared in the return filed by he assessee. By the amended provision, the interest is

leviable on the income as determined by the assessing authority minus the income on which the tax has been paid or deducted. The amendment is only calculated to clarify the ambiguity that was felt in the original provision. It is not arbitrary or unreasonable."

Now referring to the case law cited by the learned counsel for the assessee, it would be sufficient to notice that the Apex Court in J.K. Synthetics Limited's case (supra) was interpreting the provisions of Sales Tax law and, therefore, the same does not advance the case of the assessee. Equally, the judgments of the Apex Court in Ranchi Club Ltd's case (supra) and that of the Patna High Court in Ranchi Club Ltd.'s case (supra) relied upon by the assessee relate to the case prior to the aforesaid amendment and, thus, do not help the assessee's case any longer.

In view of the above, the questions of law as claimed by the assessee are answered against it. Finding no merit in this appeal, the same is hereby dismissed. No costs.

**(AJAY KUMAR MITTAL)**
**JUDGE**

**October 30, 2007** **( M.M.KUMAR )**
gbs **JUDGE**